

REMARKS

In response to the Examining Attorney's rejection of the filed claims, Applicants wish to submit the following amended claims that will describe the invention in accordance with the patentable method (U.S. Pat. 6,750,006) with which it is associated. It is hoped that the Examiner finds that these amendments will appropriately limit the claims in accordance with 35 USC §112 and §102, and provide the required arguments in support of the amendments originally filed 30 July 2007. The following will describe how these claims were amended with respect to the Examiner's comments:

In accordance with 37 CFR 1.126, the original numbering of the claims has been restored.

In accordance with 35 USC §112, the claim with the term "electromagnetic waves" has been withdrawn. Although the wave nature of electromagnetic radiation is known by those skilled in the art, and the terms energy and waves can be at times intermixed, this inconsistency has been addressed.


In respect to the Examiner's comments relative to 35 USC §102, the Examiner is correct in observing that the present application shares features with the Powers reference, wherein the device directs electromagnetic radiation toward the sample in order to cause a sample to emit fluorescence. The device also contains detectors capable of converting the emitted radiation into electrical signals. However, the Powers reference differs from the present application in that the present application requires measurement of (1) the background, (2) the reflected excitation electromagnetic radiation energies, and (3) scattered excitation electromagnetic radiation energies, and further limits the means for the analysis of the electrical signals resulting from said detected signals to those

fluorescence signals, for which background, scattering and reflection have been removed for the detection of microbes. The Powers reference further utilizes ratio fluorescence (the method where the ratio of the fluorescence signal to the reflected excitation signal is used to determine microbial content.) Moreover, the Powers reference does not use either fluorescence background or scattered excitation radiation energy signals, nor are background-corrected fluorescence signals required to lie within physiologically expected ranges relative to each other. With respect to the Examiner's comments regarding the claims involving time-modulation of the excitation energies, Applicants agree with the position of the Examiner and wish to withdraw these claims.

It is hoped that these comments contain the requested arguments in support of the amendments filed 30 July 2007, and show why the amended claim is patentable over the referenced patent (U.S. 5,760,406).

Should the Examiner have any questions, he is requested to call Applicants' undersigned attorney collect at (801) 521-3200.

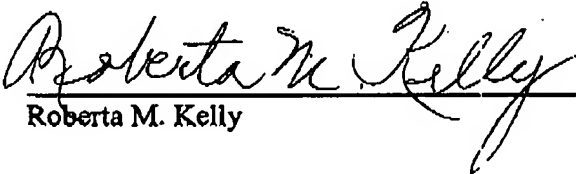
Respectfully submitted,



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CERTIFICATE OF FACSIMILE TRANSMISSION

I certify that the attached Amendment is being facsimile-transmitted to Examiner William H. Beisner, Commissioner for Patents, Alexandria, VA, fax (571) 273-8300 on the 31st day of October, 2007.


Roberta M. Kelly